

**ASSEMBLY BILL**

**No. 2146**

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**Introduced by Assembly Member Canciamilla**

February 21, 2006

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An act to add Section 221 to the Fish and Game Code, relating to fish and game.

LEGISLATIVE COUNSEL'S DIGEST

AB 2146, as introduced, Canciamilla. Hunting or fishing: local regulation.

The California Constitution provides for the delegation to the Fish and Game of Commission powers relating to the protection and propagation of fish and game. Existing statutory law delegates to the commission the power to regulate the taking or possession of birds, mammals, fish, amphibia, and reptiles in accordance with prescribed laws. Under existing law, the Department of Fish and Game exercises various functions with regard to the taking of fish and game. Under existing law, a city or county exercises certain limited authority with regard to the regulation of fish and game for the protection of public health and safety.

This bill would require the Department of Fish and Game, upon request of the commission, to review city and county ordinances that impact otherwise legal hunting or fishing activities and to identify each ordinance that it determines is unconstitutional or in conflict with state law. The bill would require the department to submit those determinations in writing to the commission and the city or county that approved the ordinance. The bill would prohibit a city or county from adopting an ordinance within its jurisdiction that impacts otherwise legal hunting or fishing activities unless the ordinance is necessary and narrowly tailored to protect public health and safety and

has only an incidental effect upon the regulation of hunting and fishing. If an ordinance proposed by a city or county does not meet these requirements, the bill would authorize a city or county, upon consultation with the department, to petition the commission to adopt a regulation concerning the matter set forth in the proposed ordinance.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 221 is added to the Fish and Game  
2 Code, to read:

3 221. (a) The Legislature finds and declares both of the  
4 following:

5 (1) The California Supreme Court in *In re Makings* (1927) 200  
6 Cal. 474, determined that Section 25 ½ of Article IV of the  
7 California Constitution, as currently set forth in Section 20 of  
8 Article IV, with certain exceptions, prohibits local governmental  
9 entities from regulating, or interfering with, the taking of fish and  
10 game and places this responsibility with the Legislature.

11 (2) The Fish and Game Commission was established in 1870  
12 to assist in the management of California's fish and wildlife  
13 resources. The California Constitution permits the Legislature to  
14 delegate to the commission certain powers relating to the  
15 management of fish and game, and the Legislature has delegated  
16 to the commission regulatory powers over hunting and fishing, as  
17 set forth in the Fish and Game Code.

18 (b) In enacting this section, it is the intent of the Legislature to  
19 affirm, subject to applicable federal law, the legal authority  
20 granted to the commission and the Legislature with regard to the  
21 taking of fish and game.

22 (c) Upon the request of the commission, the department shall  
23 review city and county ordinances that impact otherwise legal  
24 hunting or fishing activities and shall identify each ordinance that  
25 it determines is unconstitutional or otherwise in conflict with  
26 state law. The department shall submit those determinations in  
27 writing to the commission and the city or county that approved  
28 the ordinance.

1 (d) A city or a county shall not adopt an ordinance within its  
2 jurisdiction that impacts otherwise legal hunting or fishing  
3 activities unless both of the following apply:

4 (1) The ordinance is necessary and narrowly tailored to protect  
5 public health and safety.

6 (2) The ordinance has only an incidental effect upon the  
7 regulation of hunting and fishing.

8 (e) If the ordinance proposed by a city or county does not meet  
9 the requirements of subdivision (d), a city or a county, upon  
10 consultation with the department, may petition the commission to  
11 adopt a regulation concerning the matter set forth in the proposed  
12 ordinance.